

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 109 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

YUSUFBHAI @ GALJIBHAI

NANJIBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 109 of 2004
MR MAKBUL I MANSURI for Petitioner No. 1
MS PAURAMI SHETH Ld. APP for Respondents
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CORAM : HON'BLE MR.JUSTICE N.G.NANDI

Date of decision: 04/03/2004

ORAL JUDGEMENT

1. Heard Mr.M.I.Mansuri, learned advocate for the petitioner and Ms.Paurami Sheth, learned APP for the

respondents.

2. In this petition under Article 226 of the Constitution of India, the petitioner has been challenging the externment order dated 25.10.2002 (Annexure-D) passed under Section 56 of the Bombay Police Act (hereinafter referred to as "the Act") by respondent no.2, externing the petitioner from Ahmedabad city and contiguous district of Ahmedabad Rural, Gandhinagar, Kheda and Mehsana for a period of 2 years, unsuccessfully challenged by way of appeal under Section 60 of the Act (Annexure-E).

3. On 17.1.2002, show cause notice came to be served on the petitioner under Section 56 of the Act by respondent no.2. That the petitioner appeared in response to the said show cause notice and after hearing the petitioner, the impugned order of externment (Annexure-D) came to be passed externing the petitioner from the territory of Ahmedabad city and contiguous districts of Ahmedabad Rural, Gandhinagar, Kheda and Mehsana. The petitioner challenged the externment order before the State Government by way of an appeal under Section 60 of the Act but the said appeal came to be dismissed vide order Annexure-E.

4. In the show cause notice, it is stated that 5 cases under the Gambling Act came to be registered against the petitioner and two unregistered case have also been referred to wherein the petitioner is alleged to have been not paying the money for the purchase of articles and when demand is made for money for the said purchase, the petitioner used to beat such person. It is also alleged that he has been forcing people to play gambling and those who refused would be threatened him by showing the knife.

5. It is submitted by Mr.Mansuri, learned advocate for the petitioner that the statements recorded against the petitioner are of the alleged victims of the petitioner without disclosing the identity of the witnesses. It is further contended that no subjective satisfaction has been reached by respondent before passing the impugned order of externment inasmuch as there is no material to show that the statements of other persons have also been recorded and requirement of Section 56(B) of the Act has not be complied with since the statements recorded are those of the victims only and the subjective satisfaction recorded in the impugned order only relates to the victims of the incident alleged against the petitioner.

6. Reliance has been placed on the decision rendered in Special Criminal Application No.1303 of 1992 by the Division Bench of this Court, copy whereof has been placed on record. In Para.2 of the said judgment while dealing with the case of externment under Section 56 of the Bombay Police Act, the Division Bench observed, "In the impugned order of externment the Sub-Divisional Magistrate has stated that the victims of the incidents are not willing to come forward to depose against the petitioner because of his fear. Under Section 56 of the Bombay Police Act the externing authority must form a subjective opinion that witnesses are not willing to come forward to give evidence in public against the person sought to be externed by reason of apprehension on their part as regards the safety of their persons or property. This requirement is not clearly satisfied in the present case. It is clear that the opinion formed by the Sub-Divisional Magistrate is only as regards the witnesses, who are the victims of the said incident and not other witnesses. This opinion would clearly not be the requisite opinion contemplated by the mandatory requirement of Section 56. Therefore, the impugned order of externment passed by the Sub-Divisional Magistrate, Palitana at Annexure-B and the impugned order passed by the State Government at Annexure-C would be illegal. We are supported in our view by the unreported judgment of this Court in Special Criminal Application No.18 of 1969, relevant portion of which is reproduced in the case of Navabkhan Vs. State of Gujarat, reported in AIR 1974 SC 1471 at Page-1474 Para.5."

7. It is not disputed that the statements recorded for reaching the subjective satisfaction for the purpose of passing the impugned order are of the victims only and no statement of the person, other than the victims have been recorded for reaching the subjective satisfaction by the externing authority. It has been clearly laid down in the above referred judgment of the Division Bench of this Court that mandatory requirement of Section 56 of the Act requires not only the subjective satisfaction as regards the victims but Section 56 of the Act also requires the subjective satisfaction as regards the other persons.

8. In the instant case, the subjective satisfaction recorded by the externing authority is only as regards the witnesses who are the victims of the incident/externee and there is no subjective satisfaction as regards the other persons i.e. persons other than the victims of the petitioner.

9. In my opinion, the present case is squarely covered by the decision of the Division Bench rendered in Special Criminal Application No.1303 of 1992 and therefore, the petition will have to be allowed by quashing and setting aside the impugned order of externment (Annexure-D) dated 25.10.2002 passed by respondent no.2 and the order (Annexure-E) dated 30.9.2003 passed by respondent no.1.

10. In view of the above, this petition is granted and accordingly allowed. The impugned order of externment (Annexure-D) dated 25.10.2002 passed by respondent no.2 and the impugned order (Annexure-E) dated 30.9.2003 passed by the respondent no.1 are hereby quashed and set aside. Rule made absolute. Direct service is permitted.

(N.G.Nandi, J.)

(vipul)